

**COMMITTEE ON RULES OF PROCEDURE  
IN DOMESTIC RELATIONS CASES**

Wednesday, May 17, 2004 10:00 am – 3:00 pm

Arizona Courts Building

1501 W. Washington, Conference Room 119

Teleconference #: (602) 542-9006

Web Site: <http://www.supreme.state.az.us/drrc/>

**Members Present:**

Hon. Mark Armstrong, Chair  
Hon. Norm Davis  
Deborah Fine, Esq. (Telephonic)  
Bridget Humphrey, Esq.  
Hon. Michael Jeanes  
Phil Knox, Esq.  
Janet Metcalf, Esq.  
Hon. John Nelson  
Hon. Dale Nielson  
Robert Schwartz, Esq.  
Debra Tanner, Esq.  
Hon. Nanette Warner (Telephonic)  
Dr. Brian Yee

**Members Represented by Proxy:**

None

**Members Not Present:**

Annette Burns, Esq.  
Annette Everlove, Esq.  
Richard Scholz, Esq.

**Staff Present:**

Konnie Young  
Karen Kretschman, Esq.  
Isabel Gillett

**Quorum:**

Yes

## **1. Call to Order: Hon. Mark Armstrong**

After welcoming Committee members, introductions, and determination of a quorum, Judge Armstrong reviewed the new materials:

- 2004 Meeting Dates
- Workgroup Lists
- Minutes from April 28, 2004
- Proposed Rule 26.1
- Resolution Statement
- Current Master Draft of the Rules
- Packet of Forms Developed by the Supreme Court Forms Committee

### **a. Formation of New Workgroups**

Judge Armstrong stated that he wanted to spend some time on the new workgroup list and asked for volunteers to chair the new workgroups. The following chairs for the new workgroups are:

- Workgroup #7 – Trials: Judge Nielson
- Workgroup #8 – Judgments: Phil Knox
- Workgroup #9 – Post-Judgment Proceedings: Judge Davis
- Workgroup #10 – Sanctions and Contempt: Judge Nelson
- Workgroup #11 – Forms: Bridget Humphrey

Bridget had previously volunteered to chair the Forms Workgroup; she also volunteered to be a member of Workgroups #8 and #9.

### **b. Current Draft of Rules**

Judge Armstrong stated that the only new material that was not in the current draft was the Proposed Rule 26.1, and the Proposed Resolution Statement.

**TASK: Judge Armstrong asked Robert Schwartz if he would get the Proposed Rule 26.1 document to Konnie in electronic form, and Robert said he would.**

Judge Armstrong said that Judge Davis will speak about this form when he reports, and he asked Judge Davis if he had any further work on the Proposed Rule 26.1; Judge Davis responded that this was the most current version.

Judge Armstrong said that there was a new Rule 8, “Representation of Children,” which includes Maricopa County’s *Guardian Ad Litem* (GAL) Rule. He stated that this is not without controversy. He believes that representation of children is important enough to justify having a separate rule. Pima County is appointing attorneys for children, as opposed to *guardians ad litem*. He said that we may want to include provisions for both attorneys and *guardians ad litem* for different circumstances.

There is also a new section called “XII – Family Court Services.” This is being used as a catchall for rules that do not fit within the structure of any other rules at this point. All that has been included in the Master Rules thus far is Pima County’s Special Master Rule, which is equivalent to the Maricopa County’s Family Court Advisor Rule. Judge Armstrong asserted that Pima County’s rule is the best we have right now, as it was developed by a study group which took the best elements of Coconino County’s Special Master Rule and Maricopa County’s Family Court Advisor Rule.

A section on “Emergency and Temporary Orders” has been added, and also a new rule on “Resolution Management Conference.” Also added are the latest versions of Maricopa County’s local rule regarding Family Court Department Cases – Rule 6.10 and 6.11. Rule 6.10 addresses mediation, arbitration and settlement conferences; Rule 6.11 includes conciliation services, counseling, mandatory mediation or open negotiation, and assessment and evaluation. Some of the information is unique to Maricopa County, therefore, the Committee will need to review it.

Section XII (Family Court Services) also includes the Special Master Rule and the Petition for Conciliation Rule. This material will be relocated at some other date. Special Master forms have also been included.

Judge Armstrong explained that there are two Special Master rules in the document at this time. One rule is the result of the compromise that came out of the private judging legislative proposal, and the other is based on the Pima County rule fashioned after Coconino County’s Special Master Rule and Maricopa County’s Family Court Advisor rule. The Pima County rule is acceptable to the Supreme Court, and Judge Armstrong believes it is the better of the two rules.

**c. April 28, 2004 Meeting Minutes Approved**

Judge Armstrong asked for a motion to approve the minutes from the April 28, 2004 meeting.

**Motion: Minutes Approved.**

**Seconded**

**Vote: Minutes Approved.**

**2. Reports from Workgroups:**

**a. Workgroup 1: Sections I and II (Bridget Humphrey, Chair)**

Bridget stated that her workgroup had no new material to bring to the Committee. She said that her workgroup had completed its work, which just needed to be reviewed by the Committee. She is still waiting for the Ethics Opinion from the State Bar. She suggested that the Limited Scope Representation Rule should be a two-year rule instead of one year, as had been originally intended. Judge Armstrong said the Supreme Court could extend it if needed.

**b. Workgroup 2: Section XI (Judge Norm Davis)**

Judge Davis stated that his workgroup had no new material to bring to the Committee. He also stated that his workgroup had finished drafting this section, which just needs a general review by the Committee.

**c. Workgroup 3: Section III (Annette Burns, Chair)**

Annette was not present, but she had said she would send Bridget the latest Default form; Bridget had not received it at this time. Debra Tanner stated that she and Kim Gillespie had received an e-mail from Annette regarding working on the default paternity cases and the IV-D cases to determine if they should go by motion or by hearing. Debra said they had not addressed these issues yet, but some of the attorneys in her office will be meeting about these topics some time next week; she will be able to address these items at the next meeting.

**d. Workgroup 4: Section IV (Judge Davis, Chair)**

Judge Davis stated that his workgroup had reviewed and revised the temporary and emergency orders draft they had last month. There are minor changes, much of them wording. They also made sure they had all of the standard forms with the right petition.

Two of the significant pieces they worked on were the Summary Temporary Orders process (which Bridget would present), and also *Ex Parte* Temporary Orders. The workgroup decided they wanted to adhere pretty closely to the Rule 65 standard regarding the *Ex Parte* Temporary Orders, but they modified it to make it more meaningful with respect to family court. They will take one more look at it, but Judge Davis believes they will go with Option B. Judge Armstrong brought up the question regarding serving the order and notice of hearing within 48 hours. Discussion ensued. The decision was made to take out “within 48 hours” and add “as soon as practicable or as directed by the court.”

Bridget worked on two alternatives for temporary orders, one favoring a summary proceeding and the other favoring a simplified proceeding. In alternative 1, the workgroup amended the summary temporary child support order section (i). Initially it just applied to the resolution management conference; they proposed to expand it to all possible proceedings, including resolution management, hearings, and a review of the pleadings, which gives the court more discretion and simplifies it; this should eliminate the need for the simplified child support order process.

Alternative 2 went back to a Summary Temporary Child Support Order that was based on the court entering an order at the management conference or the hearing not based on pleadings, and then left the simplified child support order process in place so the court could make an order just based on the pleadings. Bridget said that probably the summary proceeding would be best. Discussion ensued, and Bridget stated that the workgroup would incorporate the Committee members’ suggestions into the draft.

Next the Committee discussed whether or not to address orders of protection. Judge Davis said that we had drafted the reference to A.R.S. Section 25-315, and subsections (b) and (e) had been added. Judge Davis pointed out that it seems as though 315 is amended every few years, and if we include these subsections, we will have to frequently go back and modify these specific statutory references. He said we would have to submit a rules change to conform to that. He suggested leaving out the sub-sections. Judge Davis said he was ambivalent on the orders of protection needing a separate rule or not. He said there is so much information a *pro per* can find regarding domestic violence that he feels this will be enough. The decision was made not to address Orders of Protection.

A member mentioned that on Rule 50(b) he thought we were going to strike “with the court.” Judge Davis agreed.

**e. Workgroup 5: Section V (Judge Nelson, Chair)**

Judge Nelson said he had nothing to add regarding his workgroup, and that his workgroup would be working on their section today.

**f. Workgroup 6: Section VI (Judge Warner, Chair)**

Judge Warner stated that her workgroup had met telephonically, and she spoke about Rule 16, sorting out various ADR issues, and reworking the mediation section.

Judge Davis said that last time the Committee wanted to include binding agreements that were reached at depositions. They added the words “court reporter” and struck the words “under oath.” The comment was expanded to make it clear that there was intent if the parties reach binding agreements at the time of the deposition, if both parties are present or represented by counsel, then the agreements made in on the record would be binding. Judge Davis said that the Committee last time indicated that they wanted agreements in writing. Judge Armstrong said that one of the reasons we did not include it last time is because this would not be consistent with Rule 80(d). The decision was made to keep it consistent with Rule 80(d).

There was discussion about settlement conferences. Judge Armstrong said he liked sending the message that we think settlement conferences are important as long as there is the caveat that they can be waived by the court. The decision was made to have Judge Warner add it in.

**3. Lunch/Workgroups meet**

The Committee recessed for lunch and several workgroups met over lunch.

**4. Reports from Workgroups (Continued)**

The Committee reconvened and Judge Armstrong asked if any of the workgroups had anything they needed to discuss.

**a. Workgroup 4 (Judge Davis, Chair)**

Judge Davis said he could give all the changes regarding Temporary Orders the workgroup had made over lunch. The workgroup made the following changes:

1. Took out the sub-sections (b) and (e) from A.R.S. §25-315 citation under the Temporary Orders section.
2. Chose Alternative 1 for (i) and (j)
3. In the second sentence of (i), “of” should be replaced by “or.” “Case” should be deleted, “or the Hearing” should be deleted, and there should be an apostrophe at the end of “parties”
4. In (j), deleted one set of “a completed.”
5. In (l) caption should read, “Accelerated Temporary Orders – Irreparable Injury”
6. There should be a comma after “opposition,”
7. Chose Option B.
8. “...within 48 hours of the issuance of the order” was changed to “as soon as possible after issuance of the order, or as ordered by the court.”
9. Removed entire sentence: “The court may also quash or modify a temporary order granted without notice upon the filing of a verified motion of the opposing party filed in accordance with this rule.”

**b. Workgroup 5 (Judge Nelson, Chair)**

This workgroup had discussed Rule 26 revisions in their meeting today.

**TASK: Bob will draft a simplified two-page 26.1 rule. His workgroup will also work on the discovery rules and have them for the next meeting.**

Judge Nelson stated that they did do some modifications to the domestic relations interrogatories. He said there were no major changes, and he will present them at the next meeting. The workgroup did get some proposed questions from Dr. Weinstock, some of which the workgroup will include. Some of the questions do address issues of child protective services and previous domestic violence issues which are more specific than what we have now.

**TASK: Judge Armstrong said that Konnie would send the members the updated master draft of the *Rules of Family Law Procedure* later today, and he asked the members to make their changes on the draft they received and send the changes back to Konnie. Konnie asked that they only send back their own sections, not the entire draft.**

**c. Workgroup 6 (Judge Warner, Chair)**

Debra Tanner handed out two forms: “Resolution Statement” and “Paternity Resolution Statement.” After reviewing the forms, the decision was made to take out “Public Assistance” in #1 of both forms, and add “IV-D Cases.” Also, the line “I have a case with the Division of Child Support Enforcement” should be a new line on its own on both forms. Judge Armstrong asked Debra to add “Proposed” to the title of each form. Judge Armstrong added that whatever we put in the Paternity form regarding past support should also be in the Resolution Statement.

**TASK: Debra said she would make the changes and then e-mail them to Konnie.**

**5. Next Meeting**

**Judge Armstrong stated that the next meeting will be held on June 4, 2004, 10:00 am – 3:00 pm, Arizona Courts Building, 1501 W. Washington, Conference Room 345. The conference call number is 602.542.9006.**

There was some discussion regarding changing the future dates from Fridays; however, Judge Armstrong stated that he was reluctant to change any dates due to the fact that no matter what day we chose, someone would not be able to attend on that date.

**6. Call to the Public**

There were no public members in attendance.

**7. Adjournment of General Meeting: Judge Armstrong**

Judge Armstrong adjourned the meeting at 1:55 p.m.